

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 154  
 SPONSOR: Committee on Education and Senator Saunders  
 SUBJECT: Background Checks/School District and Charter School Employees  
 DATE: December 11, 2003      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matthews	O'Farrell	ED	Favorable/CS
2.	_____	_____	CJ	_____
3.	_____	_____	AED	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The committee substitute subjects the following individuals to the level 2 security background investigations as provided in s. 435.04, F.S.:

- Charter school employees and governing board members;
- Individuals seeking teacher certification under s. 1012.56, F.S.;
- Adjunct (part-time) teachers; and
- Noninstructional school district employees or contractual personnel who have direct contact with minors or who have access to or control of school funds.

The screening requirement applies to initial certification or initial employment and every 5 years thereafter. The committee substitute removes the 90-day exception for certain personnel to the re-fingerprinting and rescreening requirements.

The committee substitute requires certificated teachers to inform the employer immediately if convicted of a disqualifying offense under penalty of perjury. The committee substitute requires the immediate suspension from the position requiring teacher certification or having direct contact with a minor and revocation or suspension of the teaching certificate upon failure to meet background screening requirements.

The committee substitute requires the Department of Law Enforcement to retain the fingerprint records of all instructional and noninstructional personnel required to undergo background screening in the school districts, charter schools, and university lab schools, and enter the records into the statewide automated fingerprint identification system authorized by s. 943.05(2)(b), F.S.

This committee substitute substantially amends ss. 1002.33, 1012.32, 1012.56, and 1012.57, F.S., and creates s. 1012.465, F.S.

## **II. Present Situation:**

### **Teachers**

Sections 1012.56, F.S., and 1012.57, F.S, require, in pertinent part, a teacher applicant or an adjunct teacher applicant, respectively, to submit to fingerprint checks by the FDLE and the Federal Bureau of Investigation (FBI) for initial certification. In addition, the DOE reviews the background check on a teacher whose certificate has expired and who has not continuously been employed at a school district for one year or more. Although, s. 1012.21, F.S., authorizes the DOE, to periodically conduct criminal history record checks on teachers, the DOE does not conduct any further background checks of a teacher who has not had an interruption in service of a year or more. Accordingly, most teachers undergo criminal background checks only once for the duration of their employment.

If an applicant's fingerprint results indicate a criminal history or if the applicant acknowledges a criminal history, the applicant's records must be referred to the Bureau of Educator Standards for review and determination of eligibility for certification.

According to the DOE, a teacher certificate applicant's fingerprints are reviewed under a level 2 screening standard. Under s. 435.04, F.S., all employees in positions designated by law as positions of trust or responsibility are required, at a minimum, to undergo level 2 security background investigations consisting of fingerprinting, statewide criminal juvenile records checks through the FDLE, and federal criminal records checks through FBI. In addition, the investigations may include local criminal records checks through local law enforcement agencies.

The purpose of the background investigations is to ensure that persons subject to these provisions have not been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under any of 45 enumerated provisions of state law or under any similar statutes of another jurisdiction.

Under penalty of perjury, all employees in positions of trust or responsibility must attest to meeting the requirements for qualifying for employment and agree to immediately inform the employer of any subsequent convictions under any of the disqualifying offenses. Employers of these employees who are licensed or registered by a state agency must annually submit to the licensing agency, under penalty of perjury, an affidavit of compliance.

### **Qualifications of Personnel/ Direct Student Contact**

Under s. 1012.32, F.S., all personnel who are hired to fill positions requiring direct contact with minors in any district school system or university lab school must, upon employment, file a complete set of fingerprints taken by an authorized law enforcement officer or a trained school district employee. The fingerprints must be submitted to the FDLE for state processing and to the FBI for federal processing. Fingerprint processing costs may be borne by the district school board or the employee.

New employees are on probationary status pending fingerprint processing results and determination of compliance with standards of good moral character. The law prohibits the employment of a person in any position requiring direct contact with students if he or she is found to have been convicted of a crime involving moral turpitude. Probationary employees terminated because of their criminal record are entitled to appeal these decisions.

Personnel who have been fingerprinted or screened under this provision and who have not been unemployed for more than 90 days are not required to be refingerprinted or rescreened.

The DOE has interpreted s. 1012.32, F.S., to require background checks of all individuals having direct contact with students whether employed by the district or under contract with the district. However, according to the DOE, it does not receive criminal background checks on noninstructional personnel. These background checks are reviewed at the district level.

### **Charter schools**

Under s. 1002.33, F.S., charter schools must employ or contract with persons who have been fingerprinted, as provided for in s. 1012.32, F.S. In addition, charter school board members are subject to fingerprinting requirements. The fingerprints of charter school certified teachers are submitted to the DOE through the school district having jurisdiction over the charter school.

## **III. Effect of Proposed Changes:**

**Section 1.** The committee substitute amends s. 1002.33, F.S., to require level 2 background screening of charter school employees and board members at the time of initial employment and every five years thereafter. Charter school employees and board members are already subject to fingerprinting requirements under current law.

**Section 2.** The committee substitute amends s. 1012.32, F.S., to require level 2 background screening of all personnel who are hired to fill positions that require direct contact with students at the time of initial employment or certification and every five years thereafter. The committee substitute deletes a provision in law authorizing probationary status pending fingerprint results. In addition, the committee substitute eliminates the 90-day exception for certain employees who were previously fingerprinted or screened to meet the new screening requirements.

The committee substitute requires the Department of Law Enforcement to retain the fingerprint records of all instructional and noninstructional personnel required to undergo background screening in the school districts, charter schools, and university lab schools, and enter the records into the statewide automated fingerprint identification system authorized by s. 943.05(2)(b), F.S. According to the Department of Law Enforcement, the statewide automated system should be online approximately January 2005.

The committee substitute codifies current practice in that the Department of Education requires background checks of noninstructional employees and contractors having direct contact with children. The committee substitute would explicitly endorse the Department of Education's interpretation of the term "personnel" in s. 1012.32, F.S., to include contractors in compliance with current practice. The school districts submit the fingerprints of a prospective

noninstructional employee or contractor having direct contact with a student to the FDLE for processing. Any criminal history matches are reported to the district.

**Section 3.** The committee substitute amends s. 1002.56, F.S., to require teacher certification applicants to submit to level 2 background screenings at the time of initial certification and every five years thereafter. An applicant may submit proof of screening conducted within 12 months prior to the date of initial certification to meet the requirements. Certificates may not be issued until the screening has been completed and the results have been submitted to the district school superintendent. The records of applicants with a background screening that indicate a criminal history must be referred to the Bureau of Educator Standards for review and determination of eligibility. Certificateholders, under penalty of perjury, must agree to immediately inform his or her employer if he or she is convicted of any disqualifying offense while employed in a position requiring a certificate.

Certificateholders who do not meet the background screening requirements must be suspended and their certificates are immediately revoked or suspended.

Sections 3 and 5 allow a person to submit proof of level 2 background screening to the district school superintendent. This provision presents a practical problem if it is interpreted to mean that the applicant directly submits his or her own background screening results to the district. According to school district officials, current practice involves the district submitting the fingerprints electronically to FDLE for background screening. Section 435.05(1)(c), F.S., requires the employer or licensing agency to submit the information necessary for screening to the FDLE. FDLE then conducts a criminal and juvenile records search and requests a similar search by the FBI. The FBI does not forward the background check results to individuals, rather, these records are sent to the requesting government entity, usually, FDLE. The employer or licensing agency, based on the information provided by the FDLE, then informs the employee as to whether the screening revealed any disqualifying information. It may be more appropriate to use this approach in order to minimize any possibility of falsification of screening results.

**Section 4.** The committee substitute amends s. 1002.57, F.S., to require background screenings for initial certification and every 5 years for adjunct (part-time) teachers.

**Section 5.** The committee substitute creates s. 1012.465, F.S., to provide for background screening requirements for certain noninstructional school district employees or contractors who have direct contact with minors or who have access to or control of school funds. These individuals must meet the level 2 screening requirements in s. 435.04, F.S. To satisfy these requirements, an applicant may submit proof of screening conducted within 12 months prior to the date of initial employment. Individuals who provide this proof, but who serve as noninstructional personnel may provide services prior to completion of the level 2 screening. However, these personnel may not be alone with a minor, pending the results of the backgrounds screening.

Employees who have direct contact with minors or who have access to or control of school funds are subject to level 2 background screenings every five years and must present the screening results to the district school superintendent.

The employees, under penalty of perjury, must agree to immediately inform the employer if he or she is convicted of any disqualifying offense while employed. Employees who have direct contact with minors or who have access to or control of school funds and who fail to meet the background requirements must immediately be suspended. An employee must remain suspended until an appeal of the suspension has been resolved in his or her favor.

**Section 6.** The committee substitute provides an effective date of July 1, 2004.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under section 2 of the committee substitute, the employee or the district school board may be responsible for the new background screening requirements. Under s. 1, ch. 2003-403, L.O.F., the fees for criminal history checks are currently \$23.00.

C. Government Sector Impact:

If a district does not pass the cost of the criminal history check onto the employee, the district would incur a cost of \$23.00 per employee or contractor having direct contact with students.

The committee substitute requires FDLE, beginning on July 1, 2004, to retain all fingerprint records submitted on school district, charter school, and university lab school personnel for entry into the statewide automated fingerprint identification system authorized by s. 943.05(2)(b), F.S. The system should be online in approximately January 2005. FDLE had anticipated retaining all fingerprint records by December 2004. There may be an indeterminate fiscal impact associated with collecting and entering the fingerprint records six months ahead of schedule.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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